

If there are no statutory changes regarding these issues the uncertainty that led to two pending lawsuits regarding department rules regarding identifying applicants and the issuance of licenses and identification cards to immigrants will remain. This can result in the courts determining how and whether driver license will be issued. The courts will rule on the issue of the issuance of full six year term licenses to undocumented aliens and non-immigrant aliens whose lawful presence in the United States is expired or far less than the standard six year term of driver licenses.

A state-issued driver license or identification certificate is a key link to public safety, privacy and national security in all states. Licenses are routinely used by the Department, financial institutions, retailers, law enforcement, and other entities to establish a cardholder's identity. For the safety, security and peace of mind of its residents, Texas has spent the last eleven years adopting and amending rules to produce a recognizably reliable source of identification and, at the same time, reduce exposure to identity theft and fraud. All of this time and effort may be reversed, leaving Texas with an unsecure and unreliable identity document that is vulnerable to fraud and identity theft.

Texas will be vulnerable to another Banai type situation. Individuals will come to Texas and use the lack of lawful presence requirement to obtain driver licenses. This will leave these individuals free use Texas driver licenses to overstay lawful presence or to commit fraud or illegal activities. This will call into the question the security, integrity, and reliability of Texas driver licenses as an identity document.

By June 1, 2009, forty five other states and the District of Columbia will have lawful presence as a prerequisite for obtaining a driver license. If Texas does not have lawful presence as a requirement, these other jurisdictions may question the integrity of Texas driver licenses as a reliable identity document and could begin to not accept a Texas driver license for identity purposes.

Texas will miss a benchmark for Real ID, lose all the time and effort expended to move the state toward compliance, and lose funding provided by the Department of Homeland Security to help states reach compliance.